Laborers International Union of North America, AFL-CIO, Local No. 652 (Toyota Landscape Co., Inc.) *and* Mike Sullivan & Associates, Inc.
Cases 21-CC-2607 and 21-CP-635

February 28, 1983

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS ZIMMERMAN AND HUNTER

On October 21, 1982, Administrative Law Judge James S. Jenson issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions[1] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Laborers International Union of North America, AFL-CIO, Local No. 652, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

[1] The parties to this proceeding stipulated that after the Landscape Union was certified on December 8, 1981, as the collective-bargaining representative of the Employer's "production landscaper" employees: "On January 27, 1982, by secret ballot vote, the Landscape Union, consisting of 12 or 13 employees, merged with the Landscaper Union representing six or seven employees of Sunland Nurseries, to be [called] the Landscape Union. Approximately 2 weeks later, by secret ballot vote, the Landscape Union voted to change the name from Landscape Union to the Independent Union of Craftsmen . . . ." Upon reviewing this evidence, we find no showing here that the certified Union's merger and name change did not meet the requirements of *Amoco Production Company*, 262 NLRB 1240 (1982). Thus, we agree with the Administrative Law Judge's finding that these events have not impaired the Board's certification. Indeed, no party contends otherwise.

DECISION

STATEMENT OF THE CASE

JAMES S. JENSON, Administrative Law Judge: This case was heard in Los Angeles, California, on June 2, 1982.[1] The consolidated complaint issued on March 25, pursuant to charges filed on March 9, and alleges, *inter alia*, that Respondent picketed Toyota Landscape Co., Inc., on March 8 with an object of forcing and requiring Toyota to recognize or bargain with Respondent notwithstanding that another labor organization had been certified as the representative of Toyota's employees and a question concerning representation could not appropriately be raised, all in violation of Section 8(b)(4)(i) and (ii)(C) and 8(b)(7)(A) of the Act. While Respondent admits to picketing Toyota, it denies it violated the Act. All parties were afforded full opportunity to appear, to introduce evidence, and to examine and cross-examine witnesses. Briefs were filed by the General Counsel and Respondent and have been carefully considered.

Upon the entire record in the case, including the posthearing briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

It is admitted and found that Toyota Landscape Co., Inc., with an office and place of business located in Orange, California, is engaged in providing landscaping services; that during the last 12-month period it purchased goods and products valued in excess of $50,000 directly from suppliers located outside California and that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) and Section 8(b)(4) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED AND BACKGROUND

It is admitted and found that Laborers International Union of North America, AFL-CIO, Local No. 652, herein Respondent, is a labor organization within the meaning of Section 2(5) of the Act.

The parties stipulated as follows: that on October 16, 1981, Landscape Union filed a representation petition with the Board in Case 21-RC-16881 seeking a unit of Toyota's "production landscaper employees"; that on October 22, 1981, the Regional Director of Region 21 sent, by certified mail, a potential intervenor letter entitled "Notice of Filing of Petition" to Respondent which was received on October 26, 1981; that a copy of said letter was sent to Respondent's then attorney; that on October 23, 1981, the Regional Director sent Respondent a "potential intervenor" letter, a notice of representation hearing with Form 4669 attached, and a copy of the Landscape Union petition, all of which were received in due course of the mail; that Respondent did not intervene in the representation hearing;[2] that an election was held on November 30, 1981, the tally of ballots disclosing Landscape Union prevailing by a vote of 12 to 0, with no challenged ballots; that on December 7, 1981, Mike Sullivan & Associates, the Charging Party herein, sent and Respondent received a mailgram advising that Toyota's employees had formed their own union which had been certified by the Board and stating further, "If you have any jurisdictional dispute with Landscape Union settle it away from the Kroll Company jobsite"

[1] All dates hereafter are in 1982 unless otherwise stated.

[2] The representation hearing was scheduled to be held on October 29, 1981.

and further setting forth the name and address of Landscape Union's attorney; that on December 8, 1981, Landscape Union was certified as exclusive representative of "All production landscape employees employed at the Employer's facility located at 14362 Moran Street, Westminster, California; excluding all others employees, office clerical employees, professional employees, guards and supervisors as defined in the Act"; that during the months of October, November, and until around the middle of December 1981, Toyota was in a state of transition in locating its facility from the Westminster address named in the certification to an address in Orange, California, which move was completed after the date of the certification; that between December 8, 1981, and January 27, 1982, Landscape Union held meetings of employees and had begun work on a constitution and bylaws; that on January 27, 1982, by secret ballot vote, Landscape Union, composed of 12 or 13 employees, merged with Landscaper Union representing 6 or 7 employees of Sunland Nurseries, to be the Landscape Union; that approximately 2 weeks later, by secret ballot vote, the membership voted to change the name from Landscape Union to the Independent Union of Craftsmen, herein IUC, with an office located in Fontana, California; that IUC has elected officers, has a constitution and bylaws and holds monthly meetings attended by employees; that IUC has negotiated collective-bargaining agreements with employers, including an agreement with Toyota which is effective by its terms from May 1, 1982, to May 1, 1985. On these facts I find that at all material times herein, Landscape Union, merged with Landscaper Union and with the name changed to IUC, has been and is a labor organization within the meaning of Section 2(5) of the Act. As IUC is a continuation of Landscape Union, it is further found that the merger and name change have not effected a substantial change in the representation of Toyota's employees and that the certification has not been impaired. See, e.g., *American Enka Company, A Division of Akzona Incorporated*, 231 NLRB 1335 (1977). It is further clear from the above stipulations that Respondent had knowledge of the representation petition filed by Landscape Union and that Landscape Union was certified as the collective-bargaining representative of Toyota's employees in December 1981.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Toyota's Agreement with Southern California District Council of Carpenters*

On January 18, 1982, Toyota signed a collective-bargaining agreement with the Southern California District Council of Laborers, herein called District Council, and its Local 300. Respondent is an affiliate of the District Council.[3] On March 26, 1982, Respondent's present counsel filed a charge on behalf of Respondent in Case 21-CA-21139 alleging Toyota had violated Section 8(a)(1), (2), and (5) of the Act with respect to its January 18, 1982, agreement with the District Council. The Region determined there was no merit to the 8(a)(5) allegation, which was withdrawn. The Region decided to issue complaint with respect to the 8(a)(1) and (2) allegation. Thereafter, Respondent and Toyota entered into a settlement agreement which was approved by the Regional Director on May 7, 1982, and which was pending compliance at the time of the hearing in this matter. The notice attached to the settlement agreement provides that Toyota "will not give effect to or operate under any agreement with [Respondent] at a time when another Union is the certified representative of our employees"; that it "will not give effect to our January 1982 contract with the Laborers' International Union of North America, AFL-CIO, or to any extension, renewal or modification of that contract," and that it "will withdraw and withhold all recognition from the Laborers' International Union of North America, AFL-CIO unless and until it becomes the lawful representative of our employees."

B. *Respondent Pickets a Jobsite*

From about 6:50 a.m. until about 3 p.m. on March 8, 1982, Respondent picketed a jobsite in Tustin, California, with signs reading:

TOYOTA LANDSCAPE
UNFAIR
TO
LABORERS LOCAL 652
VIOLATION OF AGREEMENT
SANCTIONED BY
ORANGE COUNTY
BUILDING & CONSTRUCTION
TRADES COUNCIL, AFL-CIO

On March 9, Respondent picketed again from about 6:55 a.m. until 7:05 a.m. with signs bearing the same legend. Jerry Couchman, project superintendent for Oltman Construction Company, the general contractor on the job, testified that the employees of Trani Electric Company and Bernard Engineering Company refused to work behind the picket line all day, and those of Locke & Sons refused to work for 2 or 3 hours because of the picket line.

Conclusions

With respect to Case 21-CC-2607, the General Counsel argues that Respondent's picket signs establish that it was contending that Toyota had violated its unlawful agreement with Respondent, and that its effort to compel Toyota to abide by the agreement had an object of requiring Toyota to recognize or bargain with it, and that in view of the prior certification of Landscape Union, its picketing with a recognitional object constitutes a violation of Section 8(b)(4)(i) and (ii)(C) of the Act. With re-

[3] In his opening statement the General Counsel stated a representative of Laborers Local 300 had threatened the general contractor on the Hertz turnaround job in West Los Angeles, that Toyota would have to sign an agreement with the Laborers or the job would be shut down and a picket line set up. Under those circumstances, Toyota signed the District Council agreement. He failed to call a witness to so testify. However, in his closing statement, counsel for Respondent stated, "we do not contest the issue of pressure or coercion on January 18 in the securing of the agreement." Lacking proof or a stipulation, I make no finding with respect to the circumstances under which Toyota became a signatory to the District Council agreement.

spect to Case 21-CP-635, the General Counsel argues that since Toyota had already lawfully recognized Landscape Union, and therefore a question concerning representation could not appropriately be raised under Section 9(c) of the Act, picketing for a recognitional object violates Section 8(b)(7)(A) of the Act.

Respondent contends that (1) Toyota had a duty to inform Respondent of its continuing with the Landscape Union and IUC following its execution of the short-form agreement with the District Council; and (2) by its unlawful conduct and its efforts to take advantage of its illegal agreement, Toyota is guilty of "unclean hands." Thus, it is argued, Toyota is not entitled to the protection of the Act, and the purpose of the Act would not be effectuated by a finding that Respondent violated the Act by reason of its picketing on March 9 and 10 [sic], 1982.[4]

I find no merit to Respondent's arguments. The cases it cites in brief are inapposite. Those cases deal with situations where unions were not informed of facts and circumstances. Here, Respondent was indeed informed of Landscape Union's certification in December 1981. Barring some showing of irregularity, which is not the case here, the certification was good for 1 year, which Respondent chose to ignore. It further sought to take advantage of the unlawful agreement between the District Council and Toyota. Nor does the fact Toyota may have been party to the unlawful agreement with District Council and its constituent locals, including Respondent, deprive it of the protections of the Act because of "unclean hands." If that argument were valid, Respondent would not have been able to invoke the provisions of the Act in the 8(a)(2) case against Toyota, because of its own unclean hands. As the General Counsel pointed out in his brief, in *Hotel, Motel, Restaurant, Hi-Rise Employees & Bartenders Union Local 355, AFL-CIO (Doral Beach Hotel)*, 245 NLRB 774 (1979), the Administrative Law Judge, whose findings and conclusions were adopted by the Board, stated at 776:

> The Board has held that "unclean hands" estops neither a company from filing a charge against one who violates the Act nor the Board from vindicating and protecting the public rights inherent in the Act, which have been infringed. *Milk Drivers and Dairy Employees, Local 546, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 133 NLRB 1314, 1322 (1961), enfd. 314 F.2d 761 (8th Cir. 1963). *Local 20, Sheet Metal Workers International Association, AFL-CIO (Bergen Drug Company, Inc.)*, 132 NLRB 73 (1961); *Plumbers Union of Nassau County, Local 457, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (Bomat Plumbing and Heating)*, 131 NLRB 1243 (1961), 299 F.2d 497 (2d Cir. 1962).

Equally unconvincing is Respondent's "entrapment" argument.

Under Section 8(b)(4)(C) of the Act, a labor organization is prohibited from exerting the prescribed types of pressure for an object of forcing any employer to recognize or bargain with it as the representative of it employees if another labor organization has been certified as the representative of such employees. It is clear from the record that Respondent had knowledge of the representative of such employees. It is clear from the record that Respondent had knowledge of the representation petition filed by Landscape Union, and of its December 1981 certification. The fact Respondent may have failed to inform its new attorney of the certification, whether intentional or not, and that as a consequence he may have authorized the picketing, does not legitimize its conduct.[5] The picketing necessarily had for its ultimate end the substitution of Respondent for the certified bargaining agent, and, therefore, an object of the picketing was recognition of Respondent, which is violative of Section 8(b)(4)(i) and (ii)(C) of the Act. Section 8(b)(7)(A) prohibits recognitional or organizational picketing by a noncertified union when another union has been lawfully recognized and a question concerning representation may not be raised under Section 9(c). Respondent does not enjoy the required certification. There has been no showing on the part of Respondent that Landscape Union was not lawfully recognized, and in view of Landscape Union's certification dated December 8, 1981, a question concerning representation could not be raised. I find, therefore, that Respondent has also violated Section 8(b)(7)(A) by picketing Toyota at the Michelle Street, Tustin, California, jobsite with an object of forcing or requiring Toyota to recognize and bargain with Respondent as the representative of Toyota's employees, even though Respondent is not currently certified as the representative of such employees, that Toyota had lawfully recognized Landscape Union, and a question concerning representation could not be raised under Section 9(c) of the Act. *Plumbers and Steamfitters, Local 129, AFL-CIO*, 244 NLRB 693 (1979).

CONCLUSIONS OF LAW

1. Toyota Landscape Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Laborers International Union of North America, AFL-CIO, Local No. 652, is a labor organization within the meaning of Section 2(5) of the Act.

3. Landscape Union, merged with Landscaper Union and, with its name changed to Independent Union of

[4] Pursuant to an agreement between the General Counsel and counsel for Respondent, an *in camera* discussion was held wherein counsel for Respondent outlined the facts he proposed to present in Respondent's defense of these cases, and the General Counsel stated he proposed to object to the evidence on the grounds of relevancy. At their request, I stated I felt the evidence was not relevant. It was therefore agreed that counsel for Respondent would make an offer of proof. This procedure was followed, the offer of proof was made, which was rejected. I have reconsidered my ruling in light of the briefs and the written transcript containing the offer of proof, and reaffirm it. In my view, even if proved, Respondent's proffered evidence would not negate a violation of either Sec. 8(b)(4)(C) or Sec. 8(b)(7)(A) of the Act.

[5] While the date was not definitively established, it is clear from the record that Respondent changed legal counsel between the date of Landscape Union's certification and the March 1982 picketing.

Craftsmen, is a labor organization within the meaning of Section 2(5) of the Act.

4. Respondent is not currently certified as the bargaining representative of Toyota's employees.

5. At all times material herein, Landscape Union has been certified by the Board as the exclusive representative of certain employees of Toyota for collective-bargaining purposes, and a question concerning the representation of such employees may not appropriately be raised under Section 9(c) of the Act.

6. Respondent, by its picketing of the Michelle Street, Tustin, California, jobsite, as found above, violated Sections 8(b)(7)(A) and 8(b)(4)(i) and (ii) (C) of the Act.

7. The unfair labor practices found above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[6]

The Respondent, Laborers International Union of North America, AFL-CIO, Local No. 652, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Picketing, or causing to be picketed, or threatening to picket or causing to be picketed, Toyota Landscape Co., Inc., at the Michelle Street, Tustin, California, jobsite, or at any other facility, at a time when Respondent is not currently certified as the representative of Toyota's production landscape employees, where an object thereof is to force or require Toyota to recognize or bargain with Respondent as the representative of Toyota's production landscape employees, or to force or require the production landscape employees of Toyota to accept or select Respondent as their collective-bargaining representative, even though Toyota has lawfully recognized in accordance with the Act another labor organization, Landscape Union, and a question concerning representation may not appropriately be raised under Section 9(c) of the Act.

(b) Engaging in, inducing, or encouraging any individual employed by Toyota or any other person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threatening, coercing, or restraining Toyota and any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Toyota to recognize and bargain with Respondent as the representative of its production landscape employees even though another labor organization, Landscape Union, has been certified as the representative of such employees under the provisions of Section 9 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 21, shall be duly signed and posted by Respondent immediately upon receipt thereof and be maintained in conspicuous places, including all places where notices to members are customarily posted for 60 consecutive days. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish the said Regional Director with signed copies of the aforesaid notice for posting by Toyota Landscape Co., Inc., if said employer is willing to do so.

(c) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[6] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT picket, or cause to be picketed, or threaten to picket or cause to be picketed, Toyota Landscape Co., Inc., at the Michelle Street, Tustin, California, jobsite, or at any other facility, at a time when we are not currently certified as the representative of Toyota's production landscape employees, where an object is to force or require Toyota to recognize or bargain with us as the representative of Toyota's production landscape employees, or to force or require the production landscape employees of Toyota to accept or select us as their collective-bargaining representative, even though Toyota has lawfully recognized in accordance with the National Labor Relations Act another labor organization, Landscape Union, and a question concerning representation may not appropriately be raised under the Act.

WE WILL NOT engage in, or induce or encourage any individual employed by Toyota and any other persons engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or threaten, coerce, or restrain Toyota and any other person engaged in commerce or in an industry affecting commerce; where in either case an object thereof is to force or require Toyota to recognize and bargain with us as the representative of Toyota's production landscape employees even though another labor organization, Landscape Union, has been certified as the representative of such employees under the Act.

LABORERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, LOCAL NO. 652